

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : MEMORANDUM DECISION
- against - : 96 Cr. 495 (DC)
BILAL ELSHAER, :
Defendant. :
X

APPEARANCES:

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CHIN, District Judge

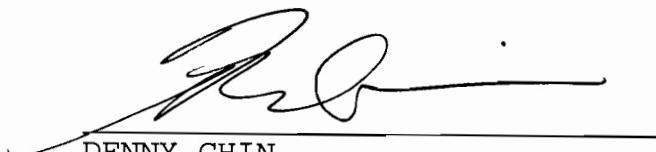
Defendant Bilal Elshaer moves for reconsideration of the Court's July 8, 2009 decision (the "Decision") denying his petition for a writ of error coram nobis. The basis for Elshaer's motion is his contention that the Court, in the Decision, did not adequately discuss one of the cases Elshaer relied on in support of his petition. The motion for reconsideration is denied.

The Court did not discuss United States v. Couto because it is inapposite. In Couto, the Second Circuit characterized as "persuasive" the defendant's argument that the district court, pursuant to its obligations under Federal Rule of Criminal Procedure 11(b), should have advised the defendant of the immigration consequences of pleading guilty, in light of changes to immigration law that make deportation automatic in many cases. 311 F.3d 179, 190 (2d Cir. 2002). The Second Circuit expressly declined to rule on the matter, however. See id. ("Nevertheless, because the circumstances of this case allow its resolution without taking up this difficult question, we need not, and hence do not, address it further."). Accordingly, not only did Couto deal with a different factual scenario than Elshaer's, but any doubt it may have cast on the Second Circuit's prior ruling in United States v. Santelises, 509 F.2d 703 (2d Cir. 1975) (per curiam), was in dicta. Until the Second Circuit or the Supreme Court abrogates the holding of Santelises, it is binding on this Court.

Elshaer's motion for reconsideration is therefore denied.

SO ORDERED.

Dated: New York, New York
July 22, 2009



DENNY CHIN
United States District Judge